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7 THE SOLARIA CORPORATION,
8 Plaintiff,
9 v.
10 GCL SYSTEM INTEGRATION
TECHNOLOGY CO., LTD.,
11 Defendant.

Case No. 20-cv-07778-BLF

**ORDER GRANTING MOTION TO
AMEND COMPLAINT**

[Re: ECF No. 62]

12
13 Before the Court is Solaria Corporation’s (“Solaria”) Motion to Amend the Complaint in
14 this breach of contract action against GCL System Integration Technology Co., Ltd. (“GCL”).
15 Solaria seeks to supplement its complaint to allege breach of contract for GCL’s failure to make an
16 agreed payment that did not become due until after Solaria filed the initial Complaint in this action.
17 GCL failed to oppose Solaria’s Motion, and the time to file an opposition has passed. *See* Civ.
18 L.R. 7-3(a); Reply, ECF No. 65.

19 Under Local Rule 7-1(b), the Court finds that this Motion may be determined without oral
20 argument. Accordingly, the May 26, 2022 hearing is hereby VACATED. Based on the below
21 reasoning, the Court GRANTS Solaria’s Motion.

22 **I. BACKGROUND**

23 On November 4, 2020, Solaria brought this action for breach of contract based on GCL’s
24 alleged failure to make certain payments under a technology cross-license agreement between the
25 parties and subsequent payment agreements. *See* Complaint, ECF No. 1. Under the Amendment to
26 Technology Cross License Agreement (“A-TCLA”), in exchange for a non-exclusive license to sell
27 products containing Solaria’s intellectual property (“Licensed Products”) in the European Union
28 (“EU”), GCL agreed to pay Solaria three payments: (1) a nonrefundable prepaid royalty fee of

1 \$2,000,000.00 due upon execution of the A-TCLA (“First A-TCLA Payment”); (2) nonrefundable
2 prepaid royalties of \$1,500,000.00 due by January 1, 2020 (“Second A-TCLA Payment”); and (3)
3 nonrefundable prepaid royalties of \$1,000,000.00 due by January 1, 2021 (“Third A-TCLA
4 Payment”). *See Motion*, ECF No. 62 at 2.

5 On October 28, 2021, Solaria moved for early summary judgment that GCL breached the
6 A-TCLA by not paying Solaria the remainder of the Second A-TCLA Payment or any of the Third
7 A-TCLA Payment. *See Summary Judgment Motion*, ECF No. 44. The parties fully briefed the
8 summary judgment motion, with GCL arguing that it did not owe the Second or Third A-TCLA
9 Payments based on defenses of ambiguity, frustration of purpose, and mutual mistake due to its
10 failure to sell the amount of Licensed Products covered by the First A-TCLA Payment. *See*
11 Opposition to Summary Judgment Motion, ECF No. 47; Reply ISO Summary Judgment Motion,
12 ECF No. 52. On January 28, 2022, the Court granted Solaria summary judgment that GCL owed
13 Solaria the remainder of the Second A-TCLA Payment it had undisputedly not paid. *See*
14 ECF No. 64. However, the Court found that since the initial Complaint was filed before the
15 January 1, 2021 date when the Third A-TCLA Payment became due, the issue of whether GCL
16 breached the A-TCLA by not paying the Third A-TCLA Payment was not properly before the Court
17 under the initial Complaint. *See id.* at 24–25.

18 At the December 2, 2021 hearing on Solaria’s summary judgment motion, in the interest of
19 expediting resolution of this matter and saving the parties’ and the Court’s time and resources, the
20 Court suggested the parties stipulate to either (1) submit the issue of whether GCL breached the
21 A-TCLA by not paying the Third A-TCLA Payment under the existing complaint and summary
22 judgment motion briefing or (2) allow Solaria leave to amend its initial complaint to allege GCL’s
23 breach of the A-TCLA through non-payment of the Third A-TCLA payment. *See ECF No. 55.*
24 GCL declined to agree to either stipulation, so Solaria had to seek leave to supplement its initial
25 Complaint in order to seek recovery for the Third A-TCLA Payment. *See ECF Nos. 60–61.*¹

27 ¹ Given that GCL now declines to oppose Solaria’s Motion, the Court notes that GCL’s
28 unwillingness to agree to either of the stipulations that the Court proposed has wasted Solaria’s and

1 On January 14, 2022, Solaria moved for leave to supplement its initial complaint to add a
2 single paragraph alleging that GCL breached the A-TCLA by not paying the Third A-TCLA
3 Payment. *See Motion*, ECF No. 62. Solaria argues that there is good cause for it to supplement its
4 complaint and the relevant factors favor granting leave to supplement, because there is no dispute
5 that GCL failed to make the Third A-TCLA Payment, the parties took full discovery on the issue,
6 and the parties fully briefed the issue with regard to Solaria's summary judgment motion. *See id.*
7 GCL failed to oppose Solaria's Motion, and the time for GCL to file an opposition has passed. *See*
8 Civ. L.R. 7-3(a); Reply, ECF No. 65.

9 **II. LEGAL STANDARD**

10 Under Federal Rule of Civil Procedure 15(d), "the court may, on just terms, permit a party
11 to serve a supplemental pleading setting out any transaction, occurrence, or event that happened
12 after the date of the pleading to be supplemented." The factors considered when determining
13 whether to grant leave to supplement a pleading include: (1) undue prejudice to the nonmovant, (2)
14 bad faith on the part of the movant, (3) futility, and (4) undue delay. *See Cabell v. Zorro Prods.*
15 *Inc.*, No. 5:15-cv-00771-EJD, 2016 WL 9180435, at *3 (N.D. Cal. Sep. 23, 2016); *Yates v. Auto*
16 *City* 76, 299 F.R.D. 611, 614 (N.D. Cal. 2013) (citing *Keith v. Volpe*, 858 F.2d 467, 474–75 (9th
17 Cir. 1988)). However, once a court files a pretrial scheduling order pursuant to Federal Rule of Civil
18 Procedure 16 setting a deadline for amended pleadings, that rule's standards apply. *See Johnson v.*
19 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). A party seeking to amend a
20 scheduling order must show "good cause" for such relief. Fed. R. Civ. P. 16(b)(4) ("A schedule
21 may be modified only for good cause and with the judge's consent."). If the moving party
22 establishes "good cause" to modify the scheduling order, "it must then demonstrate that its motion
23 is also proper under Rule 15." *Rodarte v. Alameda Cty.*, No. 14-cv-00468-KAW,
24 2015 WL 5440788, at *2 (N.D. Cal. Sept. 15, 2015) (citing *Johnson*, 975 F.2d at 608).

25 The "good cause" analysis "is not coextensive with an inquiry into the propriety of the
26 amendment under [] Rule 15." *Johnson*, 975 F.2d at 609. "Rule 16(b)'s 'good cause' standard

27
28 the Court's time and resources.

1 primarily considers the diligence of the party seeking the amendment.” *Id.* Courts may take into
2 account any resulting prejudice to the opposing party, but “the focus of the [Rule 16(b)] inquiry is
3 upon the moving party’s reasons for seeking modification … [i]f that party was not diligent, the
4 inquiry should end.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th
5 Cir. 2013) (citing *Johnson*, 975 F.2d at 609).

6 **III. DISCUSSION**

7 **A. Rule 16(b)**

8 Since the deadline to amend the pleadings under the Court’s scheduling order has passed,
9 the Court considers whether there is good cause to supplement the Complaint under Rule 16(b). *See*
10 Case Management Order, ECF No. 21. The Court finds that there is good cause. Solaria sought
11 discovery on the Third A-TCLA Payment, and argued that GCL owed this payment in its summary
12 judgment briefing. *See, e.g.*, ECF No. 28, Ex. 1, Plaintiff’s First Set of Interrogatories (Nos. 1–2)
13 at 2 (seeking discovery regarding Third A-TCLA Payment); Summary Judgment Motion, ECF No.
14 44; Reply ISO Summary Judgment Motion, ECF No. 52. Further, Solaria moved to supplement the
15 Complaint on January 14, 2022, within a month of the Court’s order indicating that the issue of the
16 Third A-TCLA Payment was submitted on the current pleading. *See* ECF Nos. 61–62. Accordingly,
17 the Court finds that Solaria has been diligent in seeking recovery for the Third A-TCLA Payment.
18 Further, there is no prejudice to GCL that will result from Solaria supplementing the Complaint to
19 cover the Third A-TCLA Payment, particularly since GCL has long been on notice that Solaria is
20 seeking recovery for the Third A-TCLA Payment and GCL has affirmatively represented that it does
21 not dispute that it owes Solaria this payment. *See* Joint Discovery Letter Brief, ECF No. 28 at 3.

22 Accordingly, the Court finds that there is good cause for Solaria to supplement the Complaint
23 after the pleading amendment deadline in the Court’s scheduling order.

24 **B. Rule 15(d)**

25 Solaria argues that its proposed supplement to the Complaint is warranted under the factors
26 courts consider in determining whether to grant leave to supplement pleadings under Rule 15(d).
27 The Court considers each factor in turn.

28 First, courts consider bad faith on the part of the movant. *See Cabell*, 2016 WL 9180435,

1 at *3. Solaria argues there can be no bad faith on its part because it sought discovery on the Third
2 A-TCLA Payment and made clear that non-payment of the Third A-TCLA Payment was part of its
3 breach of contract claim. *See Motion*, ECF No. 62 at 8–9. The Court agrees. Solaria’s conduct
4 does not appear to be a tactic—rather, Solaria considered the Complaint to adequately allege that
5 GCL owed the Third A-TCLA Payment, and now that the Court has found otherwise, Solaria is
6 diligently seeking to supplement its Complaint so it can seek recovery for that payment. *See, e.g.*,
7 Reply ISO Summary Judgment Motion, ECF No. 52 at 13–14. It is no surprise to GCL that Solaria
8 is seeking the Third A-TCLA Payment as part of its breach of contract claim. *See, e.g.*, Joint
9 Discovery Letter Brief, ECF No. 28 at 3.

10 Second, courts consider whether granting leave to supplement the Complaint would cause
11 undue delay. *See Cabell*, 2016 WL 9180435, at *3. Solaria argues that supplementing the
12 Complaint will cause no delay, because discovery is complete, the parties have fully briefed the
13 issue, and trial is not until September 25, 2023. *See Motion*, ECF No. 62 at 9. The Court agrees.
14 Minimal, if any, delay will result from Solaria supplementing the Complaint.

15 Third, courts consider whether granting leave to supplement the Complaint would cause
16 prejudice to the opposing party. *See Cabell*, 2016 WL 9180435, at *3. Solaria argues that
17 supplementing the Complaint will cause no prejudice to GCL because GCL does not dispute it owes
18 the Third A-TCLA Payment, and it has taken full discovery and fully briefed its defenses regarding
19 the issue. *See Motion*, ECF No. 62 at 9. As outlined above for its Rule 16(b) analysis, the Court
20 agrees.

21 Fourth, courts consider whether supplementing the Complaint would be futile. *See Cabell*,
22 2016 WL 9180435, at *3. Solaria argues that the issue of whether GCL owes the Third A-TCLA
23 Payment is a fully briefed issue ripe for resolution by the Court, so supplementing the Complaint to
24 include this issue would not be futile. *See Motion*, ECF No. 62 at 9. The Court agrees. The Court
25 itself noted that if Solaria sought recovery based on the non-payment of the Third A-TCLA
26 Payment, then it would need to supplement the Complaint to include allegations regarding this
27 payment now that it has become due. *See ECF No. 61*. Solaria’s proposed supplemental complaint
28 is not futile, but rather essential if Solaria wishes to pursue recovery for the Third A-TCLA Payment.

* * *

Accordingly, since all four factors favor Solaria's proposed supplement to the Complaint, the Court finds that granting Solaria leave to supplement is proper under Rule 15(d).

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Solaria is GRANTED leave to supplement the initial Complaint as proposed;
2. Solaria SHALL separately file the Supplemental Complaint within 7 days of this Order; and
3. In the event that Solaria chooses to file an additional motion for summary judgment on the new allegations regarding the January 21, 2021 payment, briefing is limited to 5 pages for the opening and responsive briefs and 3 pages for the reply.

Dated: January 31, 2022

Beth Ellen Freeman

BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California